IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.L.P..No. 350 of 2007()

CC.43/2005 of J.M.F.C., RAMANKARI

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PETITIONER/COMPLAINANT:

SHINU T.R,S/O.RAMACHANDRAN NAIR,
SHIBU VIHAR HOUSE,PUZHAVATHU P.O,CHANGANACHERRY,
KOTTAYAM.

BY ADV. SRI.K.R.KURUP
SRI.C.R.SYAMKUMAR

RESPONDENTS:

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1. BIJU MATHEW,S/O.K.M.MATHEW,
MANAGING DIRECTOR,CATALYST (CRAFT ADVERTISING
SOLUTIONS),THAZAMPALLATHU BUILDINGS,
MANJADI P.O,THIRUVALLA,PATHANAMTHITTA.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA AT
ERNAKULAM.

BY P.P.SRI.C.M.KAMMAPPU FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 350 of 2007

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Dated this the 22nd day of June, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.43/2005 on the file of the Judicial Magistrate of the First Class , Ramankary. In the complaint it is alleged that the 1st respondent borrowed an amount of Rs.1,00,000/- from the petitioner and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds with the account of the 1st respondent. Hence, after complying the statutory requirements, the complaint was filed. Even though the petitioner had produced certain documents and he was examined as PW1, he could not prove that the cheque in question was issued for repayment of the above amount. The trial court accepted the evidence adduced by the 1st respondent that he issued a blank cheque to the petitioner when he joined in daily chitty and that he had received only Rs.27,000/- from the petitioner and found that the 1st respondent succeeded to rebut the statutory presumption under section 139 of the Negotiable Instruments Act and hence he was acquitted. The case of the 1st respondent is that the petitioner issued Ext.D3 card to

acknowledge the repayments made by the 1st respondent towards the daily chitty. The further case of the 1st respondent is that Ext.D1 was executed by the petitioner to make the payment of Rs.27,000/- towards the said chitty and Ext.P1 was given in blank as a security to the said daily chitty. To prove his case, DW1 and DW2 were examined and Exts.D1 to D4 were marked.

2. Considering the entire facts and circumstances of the case, this Court is of the view that the findings entered by the trial court are on evidence and they require no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER

-6-2007